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IN THE HIGH COURT OF DELHI AT NEW DELHI

Order Reserved on: 30.11.2006
Date of Decision: January 12, 2007

WP(C) No.992/2002

\# **Voltas Limited** ..... **Petitioner**

! Through:Mr. Vinay Sabharwal and Mrs. Vinod Sabharwal, Advocates

versus

$ **Voltas Employees' Union & Anr.** ..... **Respondents**

^ Through: Mr. Umesh Sharma, Advocate

* **CORAM:**
JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

: **SHIV NARAYAN DHINGRA, J**

1. By this writ petition, the petitioner has challenged the validity of order dated 28.10.2001 passed by the Assistant Labour Commissioner(in short 'the ALC) conferring status of protected workmen on S/Shri. S.K. Sharma, Rajender Prasad Tiwari, T.C. Jhangia and Jasbir Singh, all employees of the respondent for the year 2000-01 up to 11.7.2001, when the services of the aforementioned four persons were terminated by the management consequent to disciplinary action. Mr. Trilok Singh, another workman, was declared protected workman for complete year.

2. A perusal of the impugned order would show that Voltas Employees Union,

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Certify that the digital file and physical file have been compared and the digital data is as per the physical file and no page is missing.

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Ashok Vihar, Phase-I made an application under Section 33(4) of Industrial Dispute Act (in short ' the Act') to the ALC seeking declaration as protected workmen in respect of five of its office bearers named in the above paragraph for the year 2001-02. The union stated that it had made an application to the management for the same purpose on 15.3.2001 but the management did not consider the application and did not declare the above five office bearers of the union as protected workmen. Management in its reply took the stand that union was asked certain information by the management, after receipt of application for declaration of five of its office bearers as protected workmen. The requisite information was not provided by the union. The management had asked for the process of election of the alleged office bearers by the union, when was the election held, what was the complete list of office bearers or the members of the union. The management also took the stand that S/Shri S.K. Sharma, Rajender Prasad Tiwari, T.C. Jhangia and Jasbir Singh were suspended from services on 23.8.99 for misconduct and disciplinary proceedings were initiated against them. Consequent to disciplinary proceedings, they were terminated on 11.7.01 and an application under Section 33(2) (b) of the Act was made before the Industrial Tribunal immediately after the dismissal. The management could not declare these persons as protected workmen because the contract of service between these persons and the management stood suspended. The request of the union, therefore, could not be acceded to by the management. The management requested for dismissal of the

application of the union for declaring above five persons as protected workmen. In rejoinder, the union took the stand that it was not necessary for it to send information about the conduct of election to the management and making of an application to the management, giving designations of the persons/office bearers and seeking status of protected workmen was sufficient. The list of the members of the union of their election had no concern with the subject. The union also took the stand that S/Shri S.K. Sharma, Rajender Prasad Tiwari, T.C. Jhangia and Jasbir Singh were suspended by the Management since they were office bearers of the union, out of feeling of revenge.

3. The learned Assistant Labour Commissioner held that the stand of the management seeking documents regarding election of the office bearers was not tenable. There was no proprietary in the contentions of the management that S/Shri S.K. Sharma, Rajender Prasad Tiwari, T.C. Jhangia and Jasbir Singh were suspended and could not be given status of protected workmen. By mere suspension the employee-employer relationship does not come to an end. It is only the removal or dismissal which brings the relationship to an end and all above four persons were dismissed on 11.7.2001 and they were entitled to be declared as protected workmen up to 11.7.2001. Holding this, the tribunal allowed the application of the union.

4. The order has been challenged by the petitioner on the ground that the contract of employment between above four persons and the petitioner stood suspended with

effect from 23.8.99 when the four employees were suspended on the ground of grave and serious acts of misconduct committed by them and a domestic inquiry was initiated. Since the four employees were facing domestic enquiry in respect of serious charge, the protection under section 33(4) of the Act could not be made available to them. The other ground taken is that the appointment of the four persons as office bearers and the subsequent application seeking protection as protected workmen was mala fide and ill-motivated, in order to thwart the disciplinary proceedings. Since the cause of action for initiating the disciplinary proceedings, suspension and initiating the disciplinary proceedings had arisen prior to these persons getting appointed as office bearers and prior to making application for seeking status of protected workmen, they were not entitled for any protection under Section 33(4) of the Act in respect of that cause of action.

5. The petitioner also submitted that no election of office bearers was held in the union after 1998 and no returns with regard to the union and the election were ever filed by the respondent union with Registrar of Trade Unions. The petitioner was within its right to ask when the election was held, how the election was held and who were the members of the union and elected body in order to ascertain the factual status of the persons, who had sought status as protected workmen. The Tribunal wrongly opined that these documents were not necessary and would defeat the entire purpose of section 33(4) of the Act.

6. It is also submitted that the application for grant of status of protected workmen was made by the union before Mr. S.C. Jain who was described as the Assistant Commissioner whereas it transpired that Mr. S.C. Jain was not Assistant Labour Commissioner and he was only a Labour Officer below the rank of Assistant Labour Commissioner. Mr. S.C. Jain had conducted major part of the entire proceedings, while he was not competent to conduct the proceedings under Section 33 (4) of the Act and hence the entire proceedings were vitiated. It was only at the fag end of the proceedings that these proceedings were transferred to Mr. Som Nath, Assistant Labour Commissioner. Mr. Somnath relied upon the proceedings conducted by Mr. S.C. Jain. Those proceedings could have been treated as null and void since Mr. S.C. Jain could not have conducted the proceedings de nevo. Mr. Som Nath, Assistant Labour Commissioner did not conduct the proceedings himself despite the demand of the petitioner.

7. It is pleaded that the petitioner management was not allowed to call for records of the union regarding holding of election. The respondent No.1 did not supply any proof of election having been held of the concerned persons nor any such record was produced before the authorities. The authority also declined to call for the record of Registrar of Trade Unions with regard to functioning of respondent union. The application filed by the respondent No.1 for grant of protection to aforesaid five persons was not supported by any resolution of trade union. The petitioner was

justified in not considering the application since the respondent No.1 had failed to disclose as to when the elections were held and how the persons were elected. The action of the respondent union in making application was a gross abuse of process of law with ulterior motives of protecting those persons who were facing serious charges. The application of the management under Section 33(2) (b) of the Act was also pending for approval before the concerned Labour Court and no prejudice would have been caused to the respondent if status of protected workmen had not been been given to them since the matter was subjudice before the Labour Court.

8. No counter affidavit has been filed in this case by union to the averments in the writ petition, despite opportunities.

9. In order to consider the rights of the respondents to be declared as protected workmen, the provisions of Section 33(4) of the Act and Rule 61 of the Industrial Disputes(Central Rules) 1957 are relevant provisions of law apart from the provisions of the Trade Unions Act. Rule 33(4) of the Act reads as under :

> " ***In every establishment, the number of workmen to be recognized as protected workmen for the purpose of sub-section(3) shall be one per cent. of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognized as***

protected workmen."

10. Rule 33(4) of the Industrial Disputes (Central) Rules, 1957 only prescribes what shall be the percentage and number of the workmen who can be declared as protected workman in an establishment and authorizes the Government to make rules. Regarding declaration of protected workmen, Rule 61 of the said Act reads as under:

> ***"Protected workmen.-*** *(1) Every registered trade union connected with an industrial establishment to which the Act applies, shall communicate to the employer before the [30th April] every year, the names and addresses of such the officers of the union who are employed in that establishment and who, in the opinion of the union should be recognized as "protected workmen". Any change in the incumbency of any such officer shall be communicated to the employer by the union within fifteen days of such change.*
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> *(2) The employer shall, subject to section 33, sub-section(4), recognize such workmen to be "protected workmen" for the purposes of sub-section(3) of the said section and communicate to the union, in writing, within fifteen days of the receipt of the names and addresses under sub-rule(1), the list of workmen recognized as protected workmen[for the period of twelve months from the date of such communication].*
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> *(3) Where the total number of names received by the employer under sub-rule(1) exceeds the maximum number of protected workmen, admissible for the establishment, under section 33, sub-section(4), the employer shall recognize as protected workmen only such maximum number of workmen:*
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> *Provided that where there is more than one registered trade union in the establishment, the maximum number shall be so distributed by the employer among the unions that the numbers of recognized protected workmen in individual unions bear roughly the same proportion to*

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one another as the membership figures of the unions. The employer shall in that case intimate in writing to the President or the Secretary of the union the number of protected workmen alloted to it:

Provided further that where the number of protected workmen alloted to a union under this sub-rule falls short of the number of officers of the union seeking protection, the union shall be entitled to select the officers to be recognized as protected workmen. Such selection shall be made by the union and communicated to the employer within five days of the receipt of the employer's letter.

(4) When a dispute arises between an employer and any registered trade union in any matter connected with the recognition of 'protected workmen' under this rule, the dispute shall be referred to the [any Regional Labour Commissioner(Central) or] Assistant Labour Commissioner(Central) connected, whose decision thereon shall be final.

11. A perusal of the above rule would show that only a registered trade union connected with an industrial establishment has right to get its office bearers/officers declared as protected workmen. It puts an obligation on the registered trade union to communicate to the employer before 30th April every year the names and addresses of the officers of the union employees in the establishment who in the opinion of the union should be recognized as protected workman.

12. The Trade Unions' Act, 1926, deals with the formation and registration of trade unions. Section 2(a) defines 'executive' as a body of workman to which the office bearer of a trade union is entrusted. The registered trade union is the one which is registered under the Act. In terms of section 33(4) only those trade unions can get

their workmen declared as protected workmen who are registered trade unions. Section 6 of the Trade Unions' Act provides that a trade union shall not be entitled to be registered unless the executive of the trade union is constituted in accordance with the provisions of the Act and Rules thereof provided for the same. Section 6 specifies that a trade union has to make rules specifying the manner in which the members of the executive and other office bearers shall be appointed and removed. Thus, it is clear that a registered trade union has to have its rules in respect of matters specified in Section 6(a) to (j), including rules for specifying the manner of appointment of the executive body of the trade union. If all the conditions, as stated in Trade Unions Act, are specified by the Trade Unions Registrar, all trade unions has to issue a certificate of registration in prescribed form. The registration of a trade union can be cancelled if it is obtained by fraud or by mistake or if the Trade Union has allowed any rule to continue which is inconsistent with any of the provisions of the Act or any matter as required under Section 6 of the Trade Unions Act.

13. It is obvious from the provisions of the Trade Unions Act,1926 and the Industrial Disputes(Central Rules), Act 1957, that a communication is to be made by the trade union to the employer every year before 30th April, giving addresses and designations of its office bearers to be declared as protected workmen. The names of only those office bearers can be communicated who have been appointed/elected in accordance with rules of the trade union. If the rules provided that the office bearers

are to be appointed by election, then the same should have been appointed by election. If the rules provided that they are to be nominated by some parent body, then such nominations should have been done by the parent body or if any other mode of appointing office bearers is provided in the rules of the trade union, the same has to be followed before sending the names of the office bearers to the employer for declaring them as protected workmen. If the employer has a doubt that the office bearer had not been appointed in accordance with the rules, he has every right to ask the trade union to provide him the details of appointment of the office bearers and the manner in which they have been elected or appointed. The status of a protected workmen is a privileged status which is granted by law for smooth functioning of the trade union. The status of a protected workman is given so that the office bearers, elected by the workmen, are not victimized by the employer only because they had been elected as office bearers of the trade union. Law provides for safeguards against any action of management against the protected workmen. This safeguard is not available to the other workmen. Therefore, the employer has every right to ensure that the status of protected workmen is being sought for by the genuine persons and the shield of protected workmen is not sought to be mis-used. The requirement of intimating the names of the office bearers to the employer pre-supposes that the names of only those office bearers are sent who have been appointed in accordance with rules. Compliance with rules of union and appointment of office bearers in accordance with the rules is

inbuilt into the provisions governing grant of status of protected workmen. A trade union cannot refuse to provide the information to the employer as to how the office bearers have been appointed and simultaneously seek the status of protected workmen for office bearers.

14. In the present case, four of the persons whose names were sent by the union were already under suspension and were facing departmental inquiry. When their names reached the employer, the employer sought to know as to how they were appointed/elected as office bearers. Such information should have been provided to the employer along with the application. The respondent did not provide this information to the employer even then demanded. The ALC has held that the employer had no right to seek this information. I consider that the ALC did not take a correct view of law and did not appreciate that only those office bearers have right to be declared as protected workmen who have been appointed as office bearers of the union in accordance with the rules of the union. There is no presumption that once the names of office bearers are sent for being declared as protected workmen, the persons have been rightfully appointed as office bearers. A self-appointed Executive Committee of a union de hors the rules of the trade union, cannot claim protection as protected workmen under Section 33(4) of the I.D. Act or Rules 61 of the Central Rules.

15. The employer had pleaded that since 1998 no election had taken place in the

union and no returns of the trade union was filed with the Registrar as required under the law. These averments of the employer/petitioner are neither controverted before the ALC nor have been refuted before this Court by way of filing counter. Thus, this is an admitted position that the names of the persons sent for being declared as protected workmen, were not duly appointed officer bearers of the union, neither the trade union/respondent placed on record the rules either before the ALC or before this Court, according to which these office bearers were to be elected/appointed.

16. I consider that the order of the ALC is contrary to law and express provisions of the Act. The view taken by ALC that employer was not supposed to raise any query about manner in which the persons sought to be declared as protected workmen, were elected/appointed, is wrong.

17. In view of my foregoing discussion, the writ petition is allowed. The order of ALC dated 28.10.2001 is hereby set aside. No orders as to costs.

SHIV NARAYAN DHINGRA,J

January 12, 2007
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